

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	SACV 16-01085 AG (KESx)	Date	July 31, 2017
Title	PERRY JOHNSON v. AMERICAN HOME MORTGAGE CORP. ET AL.		

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Present: The Honorable	ANDREW J. GUILFORD
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Lisa Bredahl

Not Present

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Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

**Proceedings: [TENTATIVE] ORDER GRANTING DEFENDANT'S  
CONVERTED MOTION FOR SUMMARY JUDGMENT**

This case concerns a residential mortgage. Plaintiff Perry Johnson, who is now represented by counsel, filed this lawsuit against Defendants American Home Mortgage Corporation and Selene Finance LP, purporting to allege claims under the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 *et seq.*, the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*, and various related state laws. (Compl., Dkt. No. 1 at 24–31.) Defendant Selene Finance filed a motion for judgment on the pleadings that the Court converted into one for summary judgment. (Dkt. Nos. 51.) The parties were placed on notice of the conversion, and were given nearly four months "to present all the material that is pertinent to the motion." *See* Fed. R. Civ. P. 12(d). Despite receiving ample time to respond, Plaintiff hasn't bothered to file an opposition, let alone provide any evidence that could create a genuine issue of material fact. *See* C.D. Cal. L.R. 7-12.

For the following reasons, the Court GRANTS the motion for summary judgment. (Dkt. No. 42.) The Court will enter a simple judgment.

**1. BRIEF BACKGROUND**

The Court here assumes certain undisputed representations made by the parties are accurate.

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In September 2004, Plaintiff took out a mortgage on his condominium in Rancho Santa Margarita, California. (Compl., Dkt. No. 1 at 3–4, 9.) But this case doesn’t squarely implicate his default, or any attempted foreclosure. In fact, Plaintiff readily concedes that he “may have owed money on his mortgage obligation.” (*Id.* at 9–10.) The crux of Plaintiff’s claim, rather, is that there were numerous “void assignments” of his mortgage that somehow allowed him to rescind the loan, and now precludes any entity from attempting to collect his debt. (*Id.* at 13.) Indeed, Plaintiff maintains that Defendants American Home Mortgage and Selene Finance are “third-party stranger[s] to his mortgage loan and have no ownership interest entitling them to collect payment or declare a default.” (*Id.* at 2.) Plaintiff also says that the defendants are “hiding behind the complexities of the mortgage finance system” and are “brazenly attempt[ing] to dupe [him] into believing that they have the right to collect on [his] debt.” (*Id.*) Plaintiff filed this lawsuit to stop defendants’ alleged “fraudulent practices.” (*Id.*)

## **2. LEGAL STANDARD**

Under Federal Rule of Civil Procedure 56(a), summary judgment is appropriate when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” A motion for summary judgment is designed to “prevent vexation and delay, improve the machinery of justice, promote the expeditious disposition of cases, and avoid unnecessary trials when no genuine issues of fact have been raised.” 10A C. Wright & A. Miller, *Federal Practice and Procedure* § 2712, p. 236–38 (4th ed. 2016). The essential inquiry for the Court is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251–52 (1986).

At this stage, the Court must view the facts and draw all reasonable inferences “in the light most favorable to the party opposing the [summary judgment] motion.” *Scott v. Harris*, 550 U.S. 372, 378 (2007) (quoting *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962) (per curiam)). The initial burden is on the moving party to demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). But if the moving party carries that burden, then the nonmoving party must produce enough evidence to create a genuine issue of material fact. *Id.* at 322–23.

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**3. ANALYSIS**

Defendant Selene Finance seeks entry of judgment on the basis of the complaint, and various appropriately noticed public records concerning Plaintiffs's mortgage—like the deed of trust, various notices of default, various assignments of the deed of trust, and various notices of the trustee's sale. *See* Fed. R. Evid. 201(b); *see also Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001). Defendant also points out that Plaintiff “has been living ‘rent-free’ for more than six years.” (Def.’s Mot. for J. Pleadings, Dkt. No. 42-1 at 1.)

Indeed, the record reveals a fairly ordinary transactional history. Plaintiff purchased his condominium in November 2004. The transaction was financed by a \$190,000 loan from American Home Mortgage, and secured by a deed of trust recorded at that time. After making payments for about six years, Plaintiff defaulted on the loan and notice of default was appropriately recorded. Over the next five years, several substitutions of trustee were appropriately recorded, the deed of trust was variously and appropriately assigned between Wells Fargo Bank and the Federal Home Loan Mortgage Corporation, and numerous notices of trustee's sale were appropriately recorded. Although no sale actually occurred during that time, Plaintiff never cured his default. Servicing of the loan was eventually transferred to Defendant Selene Finance in April 2016, and Wells Fargo Bank assigned its interest in the property to Wilmington Savings Fund Society. (*See generally* Public Records, Dkt. No. 43 at 1-3.) Plaintiff hasn't produced any evidence in response that could create a genuine issue of material fact. *See Celotex*, 477 U.S. at 322–23.

Based on this record, Defendant argues that all of Plaintiff's claims are meritless and that “no facts exist to support the asserted claims.” (Def.’s Suppl. Mem. for Summary J., Dkt. No. 62 at 4.) The Court agrees with the arguments presented in Defendant's papers. For example, the undisputed facts contradict Plaintiff's request for a declaratory judgment regarding the status of the deed of trust. Further, Plaintiff's TILA claim is time-barred and, in any case, he's not entitled to rescission under the Act's disclosure requirements. *See* 15 U.S.C. § 1635; *Jesinoski v. Countrywide Home Loans, Inc.*, 135 S. Ct. 790, 792 (2015). Nor is there any basis to support Plaintiff's claims that Defendant Selene Finance somehow engaged in abuse, deceptive, or unfair “debt collection practices.” *See* 15 U.S.C. § 1692. Further, the Court declines to exercise supplemental jurisdiction over Plaintiff's related state-law claims. *See* 28

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U.S.C. § 1367(c)(3); *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639 (2009).

This case has an extensive and tortured procedural history. Despite providing Plaintiff with numerous chances to have a full and fair hearing regarding the merits, over the last year he has repeatedly failed to comply with this Court's orders, has repeatedly abused this Court's accommodation for *pro se* litigants, and has repeatedly wasted this Court's limited resources. (*See, e.g.*, Dkt. Nos. 26, 28, 30, 31, 34, 37, 38, 51, 54.) The Court will no longer indulge Plaintiff's dilatory tactics, which might reflect the weakness of Plaintiff's claims.

**4. DISPOSITION**

For these reasons, the Court GRANTS the converted motion for summary judgment. (Dkt. No. 42, 51.) The Court will enter a simple judgment.

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